

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 808 - HB 993

March 20, 2023

SUMMARY OF BILL AS AMENDED (005151): Makes changes to the *Primacy and Reclamation Act of Tennessee of 1977* (Act). Requires the state to suspend efforts to obtain exclusive jurisdiction over surface coal mining and reclamation operations within this state under the federal *Surface Mining Control and Reclamation Act of 1977* (30 U.S.C. § 1201 et seq.) until the Commissioner of the Department of Environment and Conservation (TDEC) notifies the Governor that the following two stipulations have been met:

- The surface coal mining industry in this state is fiscally self-sufficient to support a state-operated program, with revenues from fees and taxes generated from the industry anticipated to meet required expenditures; and
- This state has allocated monies sufficient to address actual and potential liabilities resulting from insufficient bonding relative to surface coal mining and reclamation operations.

Requires the TDEC, during any period of suspension, to consult with industry stakeholders regarding the status of surface mining and reclamation operations in this state.

Requires the TDEC, by July 1, 2024 and each July 1 thereafter until July 1, 2028, to submit a report to the Governor, the Speaker of the Senate, and the Speaker of the House of Representatives containing data on both the tonnage of coal severed from the ground in surface coal mining reclamation operations in this state during the prior fiscal year and the amount of projected revenue from acreage fees, severance taxes, permit fees, and amendment fees that would have been required under state law if the state had exclusive jurisdiction over surface coal mining and reclamation operations in this state during the prior fiscal year. Establishes that if the Commissioner has not notified the aforementioned individuals prior to July 1, 2028, any obligation of this state to seek to obtain exclusive jurisdiction over surface coal mining and reclamation operations within this state under the federal *Surface Mining Control and Reclamation Act of 1977* terminates.

Establishes that any fee required by the Act that reaches 15 days of delinquency will be assessed a penalty of 5 percent of the amount due. Such penalty shall be assessed on the first day of each month during which a fee or accrued penalty remains unpaid. Additionally, a fee not paid within 15 days bears interest at the maximum rate permitted under Tennessee Code Ann. Title 47, Chapter 14, or another law, from the due date to the date paid; however, the total penalties and interest that accrue may not exceed 3 times the amount of the original fee.

Establishes that no permit, renewal, or transfer or a permit shall be issued to an applicant until all outstanding fees are paid in full. Establishes that if a fee is not paid in full, including any

interest and penalty within 60 days of the due date, the Commissioner of the TDEC may suspend the permit, pending the opportunity for hearing, until the amount due is paid in full, and refer the matter for collection. Additionally, the Commissioner may seek injunctive relief in the Chancery Court of Sumner County or any court of competent jurisdiction for a judgment in the amount owed to the state. Establishes an appeal process for those applicants and permittees who disagree the calculation or applicability of a fee.

Increases the required minimum bond of an applicant to a permit under the Act from \$10,000 to \$75,000.

Establishes that any permittee who violates the provisions of the Act is liable for any damages to the state resulting from such violation, including any reasonable expenses incurred in investigating and enforcing violations and defraying expenses necessary for activities supporting the reclamation of land and water adversely affected by surface coal mining and exploration activities after August 3, 1977.

FISCAL IMPACT OF BILL AS AMENDED:

Other Fiscal Impact – Any fiscal impact to state or federal funds cannot be determined with reasonable certainty due to multiple unknown factors.

Assumption:

- Based on information provided by the TDEC, the department is not currently collecting fees for the program since they are unable to collect such funds without achieving primacy from the federal government.
- This legislation places stipulations that must be met to avoid termination of the state's push for primacy over surface coal mining and reclamation operations in Tennessee.
- Based on information provided by the TDEC, Section 16 of the legislation will result in the Department pausing their work on primacy achievement.
- Based on information provided by the TDEC, the Department received \$917,600 on October 1, 2019 and \$1,119,984 on October 1, 2020 from the federal Office of Surface Mining Reclamation and Enforcement (OSM). These are currently unspent dollars which have been extended until September 30, 2023; however, the TDEC reports that, based on correspondence with the OSM, these funds will not be required to be paid back.
- The TDEC currently has six approved, but unestablished, positions and two vacant positions.
- Based on information provided by the TDEC, the Department of Finance and Administration has transferred the recurring base budget of \$871,000 to the TDEC to cover six full-time positions and two vacant full-time positions.
- This legislation may result in the state continuing or discontinuing its work on primacy over surface mining and reclamation operations in the state. The ultimate outcome of this legislation is based on multiple unknown factors. Any subsequent impact regarding state or federal funds cannot be determined with reasonable certainty.

- Any impact on severance tax revenue, as a direct result of this legislation, is estimated to be not significant.
- Increasing the required minimum bond that must be held by permittees under this Act is estimated to have no significant impact on the number of surface mining permits issued by the state.
- The Governor's Recommended Budget on page B-282 recognizes an increase in state expenditures in FY23-24 of \$216,000 for the TDEC's Surface Mining Coal Program.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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